

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JUAN ORDONEZ,

Claimant,

vs.

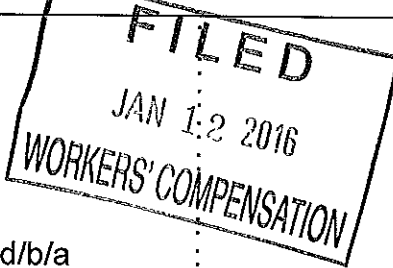
LEISURE SERVICES, INC. d/b/a
HOTEL PATTEE,

Employer,

and

CNA,

Insurance Carrier,
Defendants.



File No. 5039486

ALTERNATE MEDICAL
CARE DECISION

HEAD NOTE NO. 2701.

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant, Juan Ordonez. Claimant appeared personally and through his attorney, Nicholas Platt. Defendants appeared through their attorney, Garrett Lutovsky.

The alternate medical care claim came on for hearing on January 12, 2016. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The record consists of claimant's exhibits 3-6, which include a total of six pages. The record also contains defendants' exhibits A-C, which contain nine pages. All exhibits were received into the evidentiary record without objection. Claimant testified on his own behalf. No other witnesses were called to testify.

ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care in the form of pain management treatment by a pain specialist other than Christian Ledet, M.D.

FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

Juan Ordonez, claimant, sustained a work related injury on April 5, 2011. Among the various injuries he has alleged as part of that work accident is a back injury for which defendants have provided medical care. Mr. Ordonez has been treated by Mohammad S. Iqbal, M.D., a pain specialist from 2012 through the summer of 2014. (Claimant's testimony) Dr. Iqbal provided claimant multiple injections, which claimant testified were helpful in managing his symptoms. (Claimant's testimony)

In July 2014, Dr. Iqbal opined, "I do not think I have anything to offer in terms of interventional techniques." (Exhibit A) In response to an inquiry from defense counsel in September 2014, however, Dr. Iqbal indicated that he did anticipate claimant would require future medical care for his low back condition. (Ex. 6, page 1)

Defendants transferred claimant's care to another pain specialist, Robert Rossi, M.D. Dr. Rossi provided Mr. Ordonez pain treatment, including injections and narcotic medications through August 2015. In his final office note in August 2015, Dr. Rossi noted, "I feel the patient continues to be MMI for his neck, low back pain, right knee pain, left shoulder pain. . . . As per Dr. Graham's recommendations, I am weaning him off his high risk of opioid therapy medications." (Ex. B, p. 3) However, Dr. Rossi recommended, "The patient is to follow-up with his primary care physician for his gabapentin, NSAID and Flexeril." (Ex. B, p. 3)

Rather than authorizing claimant's personal physician or another physician to manage claimant's gabapentin, NSAID and Flexeril, defendants authorized claimant to be evaluated by another pain specialist, Christian Ledet, M.D. Claimant testified that Dr. Ledet told him that he was not permitted to treat claimant, as the defendants had only authorized a one-time evaluation with Dr. Ledet. However, following his evaluation, Dr. Ledet opined, "I do not believe it is just in the patient's best interest to continue to pursue medication management strategy with controlled substances. The risk-benefit ratio and previous success with injections indicates that this is also a treatment strategy that is neither reasonable nor prudent." (Ex. C, p. 4)

I find that each of the three pain specialists has recommended against further management through a pain specialist. Dr. Iqbal specifically indicated he had no further interventional techniques to offer, which I interpret to mean he did not recommend further injections, among other potential interventional options. Dr. Rossi recommended against further narcotic medication management, but recommended the use of NSAID, gabapentin and Flexeril. Dr. Ledet recommended against the use of narcotics or injections.

In response to these three pain specialists' opinions, claimant offers an emergency room record dated December 11, 2015. Claimant testified that his pain

levels are higher than when he was treating with Dr. Rossi. He testified that his pain levels today range from 10/10 to 20/10 on a 0-10 pain scale. He testified that he sought treatment at the emergency room as a result of his ongoing symptoms.

Following his evaluation, the emergency room physician concluded that claimant's condition was "a chronic ongoing issue." (Ex. 3, p. 1) The emergency room physician recommended that claimant "should be evaluated by his chronic pain specialist." (Ex. 3, p. 1) However, given the opinions of the three pain specialists that have treated or evaluated claimant to date, defendants declined to authorize return evaluation or treatment with a pain specialist.

Considering the credentials of the respective physicians, I find the opinions of the three pain specialists to be superior to and more convincing than recommendation of the emergency room physician that likely did not have a full medical history or knowledge of all the prior pain management efforts or recommendations. I find that claimant has not proven treatment through a pain specialist is reasonable or necessary at this point in time given the recommendations offered by Dr. Iqbal, Dr. Rossi, and Dr. Ledet.

However, I also find that there are other potential treatment options available, including attempts to use gabapentin, NSAID's, and Flexeril. I find such treatment options were recommended by Dr. Rossi and are reasonable treatment options that should be attempted. At hearing, defendants agreed to authorize an occupational medicine physician, a family physician, or an internal medicine physician to consider these treatment options and offer necessary medical care, if necessary and appropriate.

Claimant still requests transfer of care and an order authorizing another pain specialist. However, to the extent that the undersigned finds treatment with a pain specialist is not reasonable and necessary at the present time, claimant agreed to accept treatment with an occupational medicine physician, family physician, or internal medicine physician. I find that the most appropriate, reasonable, and necessary care proven to be required at the present time is through an occupational medicine physician, family physician or internal medicine physician for purposes of considering and hopefully implementing Dr. Rossi's recommendations for control of claimant's symptoms through the use of gabapentin, NSAID's and/or Flexeril.

REASONING AND CONCLUSIONS OF LAW

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v.

Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P 14(f)(5); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27; Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner, 78 (Review-Reopening 1975).

Having found that claimant failed to prove treatment through another pain specialist is reasonable and necessary at this time, I conclude that claimant has failed to prove entitlement to the relief he specifically requests. However, having found that alternate medical treatment with an occupational medicine physician, a family physician, or an internal medicine physician for purposes of attempting alternate medication management via the use of gabapentin, NSAID's, and/or Flexeril is reasonable and appropriate pursuant to the recommendations of Dr. Rossi, I conclude it is appropriate to order defendants to select and authorize such a physician to evaluate and treat claimant's low back condition pursuant to their verbal agreement at the time of the alternate medical care hearing.

ORDER

THEREFORE IT IS ORDERED:

Claimant's request for an order and authorization of another pain specialist to treat his low back condition is denied at this time.

Pursuant to their verbal agreement at the time of the alternate medical care hearing, defendants are ordered to provide medical care through an occupational medicine physician, a family physician, or an internal medicine physician to consider and hopefully manage claimant's symptoms through the

use of medications recommended by Dr. Rossi and/or other methods deemed medically reasonable and necessary by the treating physician.

Defendants shall identify an appropriate physician within 10 (ten) days of the entry of this order and shall schedule an evaluation for purposes of establishing treatment with that physician at the physician's first available appointment time.

Signed and filed this 12th day of January, 2016.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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